In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 115

WARREN TRADING POST COMPANY, APPELLANT

v.

ARIZONA STATE TAX COMMISSION, ET AL.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA

MEMORANDUM FOR THE UNITED STATES

In the memorandum filed by the United States urging review of the decision of the Supreme Court of Arizona, we set out, in summary form, our reasons for believing that the Arizona tax was in conflict with the Commerce Clause of the United States Constitution and with the statutes enacted by Congress dealing with trading with the Indians. The appellant and the *amici* supporting appellant's position have developed these arguments fully in their briefs. We therefore believe it unnecessary for the government to expand upon the arguments stated in our prior memorandum, merely to emphasize our belief in the correctness of

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appellant's position and the importance of the considerations urged.

In its prior memorandum, the government did not, however, refer to this Court's decision in *Williams* v. *Lee,* 358 U.S. 217, which we believe provides an additional and sufficient ground for overturning the decision below. In *Williams* the Court noted that the starting-place for a determination of the scope of State jurisdiction over Indian tribes is *Worcester* v. *Georgia,* 6 Pet. 515, 561, where Chief Justice Marshall wrote for the Court that "The Cherokee nation * * * is a distinct community, occupying its own territory * * * in which the laws of Georgia can have no force * * *. The whole intercourse between the United States and this nation is, by our constitution and laws, vested in the government of the United States." The Court noted in *Williams* that these principles have been somewhat modified over the years but "the basic policy of *Worcester* has remained. * * * Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them." 358 U.S. at 219–220. Finally, the Court noted that Congress, too, has assumed that the States have no "power to regulate the affairs of Indians on a reservation"; for example, in enacting comprehensive federal statutes regulating trade with Indians. *Ibid.*

The exclusive power to tax transactions with Indians occurring on an Indian reservation is, we believe, a necessary concomitant of the reserved power

of the Indian tribe to govern itself, absent contrary federal statutes. While Congress has allowed the States to assume other prerogatives of sovereignty over Indian tribes, significantly, no statute has ever ceded the States a power to tap the resources necessary for the operations of government on the reservation. Indian self-government cannot be a meaningful enterprise if the power of the tribe to tax transactions with Indians on the reservation is drained by duplicate State taxation of the very same transactions.

We, therefore, believe that the decision below should be reversed, not only for the reasons we have previously stated, but also because of the dispositive effect of this Court's opinion in *Williams* v. *Lee*. The language of the Court's concluding paragraph is controlling here. "There can be no doubt that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves. It is immaterial that respondent is not an Indian. He was on the Reservation and the transaction with an Indian took place there. Cf. *Donnelly* v. *United States, supra; Williams* v. *United States, supra*. The cases in this Court have consistently guarded the authority of Indian governments over their reservations. * * *"

Respectfully submitted.

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U.S. GOVERNMENT PRINTING OFFICE: 1964